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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

ORDER RE: PERSONAL INJURY
CLASS ACTION CASES NOT
ADDRESSED BY COURT'S JUNE
2002 ORDER DENYING CLASS
CERTIFICATION

This document relates to:

Hunnicut v. Novartis Corp.,
No. C02-792R

Riptoe, et al. v. Bayer Corp.,
et al., No. C02-355R

Bickham, et al. v. American
Home Products Corp., et al.,
No. C02-907R

Myers, et al. v. Smithkline
Beecham Corp., et al., No.
C02-1170R



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I. BACKGROUND

On June 5, 2002, the court issued an order denying certification in four nationwide and one Louisiana statewide personal injury class action cases.¹ In that order, the court noted its

¹ See MDL 1407 Order Granting Defendants' Motion to Strike Class Allegations and Deny Class Certification in Toombs v. Bayer Corp., et al., No. C02-32R; Fife, et al. v. American Home Products Corp., et al., No. C01-2144R; Ricks, et al. v. American Homes Products Corp., et al., No. C01-1408R; Havard v. Smithkline Beecham, Inc., et al., No. C01-1645R; and Burbel, et al. v.

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1 understanding that cases with similar proposed classes had been
2 filed, but not yet transferred to the MDL court at the time of
3 defendants' motion to strike class allegations and deny class
4 certification. The court stated that, to the extent applicable,
- 5 it would extend its holding on certification to cases with
6 similar proposed classes transferred into the MDL. Defendants
7 now request that the court extend its June 5, 2002 order denying
8 certification to the four cases listed above.

9 II. DISCUSSION

10 Like the cases addressed in the court's June 2002 order, the
11 four cases at issue here were all filed in Louisiana. These
12 cases also similarly propose classes comprised of individuals who
13 suffered injuries after ingesting PPA-containing products, and/or
14 who may suffer such injuries, and/or who have sustained a justifi-
15 fiable fear of sustaining such injury in the future. As such,
16 these cases appear to entail proposed classes similar, if not
17 identical, to those proposed in the cases in which the court
18 previously denied class certification.

19 "As soon as practicable after the commencement of an action
20 brought as a class action, the court shall determine by order
21 whether it is to be so maintained." Fed. R. Civ. P. 23(c)(1).²

22 _____
23 Slmithkline Beecham Corp., et al., No. C02-258R (June 5, 2002).

24 ²The court's duty to promptly decide the question of class
25 certification remains true even where the parties themselves have
26 not moved for a determination on the issue. See 5 James Wm.
Moore et al., Moore's Federal Practice § 23.61[4] (3d ed. 2002).

1 Here, defendants seek a certification ruling based on the simi-
2 larity between these cases and those in which the court already
3 denied certification.

4 Although the court noted its intention to extend its certif-
- 5 ication ruling to similar cases, it did not specifically take
6 these cases into consideration at the time of its June 2002 order
7 and has not yet received any response from plaintiffs with
8 respect to defendants' request for a certification ruling. Given
9 the significance of a class certification decision, the court
10 believes that plaintiffs in these cases should be afforded an
11 opportunity to address the court before an extension of the
12 court's order denying class certification may be issued.³

13 However, due to the apparent similarity between these and
14 the previously addressed cases, the court finds that extensive
15 briefing on the issue would be both duplicative and unnecessary.
16 As such, the court will allow plaintiffs in the above cases
17 thirty (30) days from the date of this order in which to submit a
18 brief response to defendants' request for a certification ruling,
19

20 ³Motions seeking class certification were filed in the
21 transferor courts in two of the four cases at issue, although it
22 appears as though only one of those motions was accompanied by a
23 memorandum in support of certification. See Hunnicut, No. C02-
24 792R and Riptoe, et al., No. C02-355R. The court recognizes that
25 it extended its June 2002 order to a case in which a motion for
26 certification had not yet been filed. See Burbel, No. 02-258.
However, defendants had then argued the applicability of its
motion to similar personal injury class actions and specifically
pointed to Burbel in their reply briefing, after which
plaintiffs, already represented by counsel for Burbel, were
afforded the opportunity to file a sur-reply.

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1 addressing if and how their proposed classes differ from those in
2 which the court previously denied certification. The court warns
3 plaintiffs against a reiteration of the arguments made in the
4 briefing already taken into consideration. Instead, plaintiffs
- 5 should limit their response to the differences, if any, between
6 their proposed classes and those already considered by the
7 court.⁴ That is, plaintiffs should address why the court's order
8 would not be equally applicable to their proposed classes.
9 Defendants may jointly file a brief reply no later than fifteen
10 (15) days after receipt of plaintiffs' response(s).

11 III. CONCLUSION

12 The court declines, at this time, to issue an order extend-
13 ing its June 5, 2002 order denying class certification to the
14 above-described cases. The parties shall abide by the briefing
15 schedule outlined above in submitting memoranda in support of
16 their positions on this issue.

17 DATED at Seattle, Washington this 9th day of January, 2003.

18 
19 BARBARA JACOBS ROTHSTEIN
20 UNITED STATES DISTRICT JUDGE
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25 ⁴ If plaintiffs find the proposed classes indistinguishable,
26 they should inform the court that no briefing will be forthcoming.